

Bethesda Lutheran Cemetery
9423 Kennedy Road
Markham, Ontario

CEMETERY BY-LAW

Approved by the
Bethesda Lutheran Cemetery Board
July, 2016

BAO Approval September 2016

Amended July 2024
BAO Approved July 2024

Preface

Bethesda Lutheran Cemetery is located at 9423 Kennedy Road, just north of 16th Avenue on the site of the original St. Phillips Lutheran Church. The technical designation is part of Lot 17, Concession 6, Township of Markham.

The first burial is Marie Eckardt, daughter of Philip Eckardt, in 1803. Philip Eckardt was the owner of the 200 acre farm property at the time. His log house (located just behind the cemetery) was used as the original meeting house of the St. Phillips Congregation. The congregational name was changed to Bethesda Lutheran Church following the split up of the congregation during the tenure of Rev. V. P. Mayerhoffer. An Anglican Church congregation was formed across the road and took the name St. Phillip's.

The Bethesda Lutheran Cemetery Board is appointed by the congregation of Bethesda Lutheran Church at its Annual Church Meeting. The four acre property (6 separate deeds) is registered in the name of The Executive Trustees of Bethesda Lutheran Cemetery. The Bethesda Lutheran Cemetery Board executes all of the functions of the Executive Trustees of Bethesda Lutheran Cemetery.

Bethesda Lutheran Cemetery is licensed as a Cemetery in accordance with the Funeral, Burial and Cremation Services Act 2002 (FBCSA) and under the supervision of the Bereavement Authority of Ontario

It is the goal of the Bethesda Lutheran Cemetery Board to provide a respectful and peaceful Christian burial ground that fully honours those who have passed this world, for the members of the Bethesda congregation, the GTA Lutheran communities, and the Markham community in general.

A ADMINISTRATION

1. The Cemetery Operator of Bethesda Lutheran Cemetery reserves full and complete control and management of the land, structures, plantings, books and records of the Cemetery and complete authority to administer this By-law.
2. Management and direction are entrusted to the Cemetery Operator who are appointed by the Congregation of Bethesda Lutheran Church at its Annual Church Meeting. They serve without remuneration.
3. All monies received are used for the operation, improvement and maintenance of the Cemetery.
4. The Cemetery Operator will meet every six months and as required, to set prices, resolve matters regarding upkeep, maintenance, finances and interpretation of policies and By-law.
5. Recorded minutes of all Cemetery Operator meetings and any resolutions adopted will be kept as a part of the records of the Cemetery.
6. No casket interment or removal of human remains in a casket will take place without notice to the Chair of the Board or his delegate who will ensure that a proper Burial Permit or other certificate required by law is furnished in each instance.
7. The Cemetery Operator distinctly disclaims all responsibility for loss or damage from causes beyond its control and especially from damages caused by the elements, acts of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, accidents, invasion, insurrections, riots or order of any military or civil authority, whether damage is direct or collateral.
8. The Cemetery Operator will take reasonable precautions to protect the property of the

Interment Rights Holder but assumes no liability or responsibility for the loss of or damage to any article of any type that is placed on any lot or common area.

9. The Cemetery Operator reserves the following rights and privileges to be exercised from time-to-time in accordance with any governing Provincial legislation in effect at the time.
 - (a) To resurvey, enlarge, construct a building or structure, alter and/or diminish all or any portion of the Cemetery,
 - (b) To lay out, establish, close, eliminate or otherwise modify or change the location of roads, walks or drives,
 - (c) to create or remove easements and rights of way over and through all of the cemetery for the purpose of installing, maintaining or operating utility or communication lines, drains, irrigation systems or for any other cemetery purpose provided that no interments or sale of Interment Rights have taken place in these areas.

B SALE AND TRANSFER OF INTERMENT RIGHTS

1. The interment rights for a lot/plot can be purchased by individuals and families from the Cemetery at the rate on the current price list, as established by the Cemetery Operator. The price includes the amount that must be deposited to the Care and Maintenance Fund as specified in the Funeral, Burial and Cremation Services Act, 2002 (FBCSA)
2. Purchasers of interment rights acquire only the right and privilege of burial of the dead and of constructing monuments or placing markers, subject to the Cemetery By-law from time to time in force with Ministry of Consumer Services, Cemeteries Regulation Unit approval.
3. All purchasers of Interment Rights must sign a contract with the Cemetery. This contract has been adopted by the Cemetery Operator and has been filed with the Ministry.
4. All purchasers will receive a copy of the By-law. By signing the contract

the purchaser agrees to abide by these By-laws.

5. All purchasers must pay the full purchase price at the time of signing the contract.
6. The Cemetery Operator shall provide each Rights Holder at the time of the sale with:
 - a. A copy of the contract
 - b. A copy of the Cemetery By-law
 - c. A Certificate of Interment Rights
 - d. A copy of the current price list
7. Only one Certificate of Interment Rights will be given to the purchaser(s), a copy of which shall be kept in the Cemetery files.
8. If interment rights are transferred, the Rights Holder must return the original Interment Rights Certificate to the Cemetery Operator who will issue a new certificate for a fee.
9. To ensure the correctness of records of ownership and interments, no transfer of any Interment Rights or any interest therein will be binding upon the Cemetery Operator until notice is given in writing to the Cemetery Operator. Written notice must include lot information, name and address of the proposed Rights Holder, requested date of transfer, and authorized signature from the original Interment Rights Holder or their legal representative. Upon receipt of written notice, and after these particulars have been registered, the transfer will be made. The request to transfer the interment rights to a new certificate holder does not negate the right of interment of any person previously designated with a legal and un-revoked right.
10. The Cemetery Operator permits the interment rights holder to resell their interment rights or scattering rights, if no rights have been used, to a third party, at no more than the current price listed on the cemetery price list, as long as the resale is conducted through the Cemetery Operator and the purchaser meets the qualifications and requirements as outlined in the Bethesda Lutheran Cemetery By-law.
11. Resale of Interment Rights

A. The interment rights holder(s) intending to sell their rights shall provide the following documents to the Cemetery Operator so that the Cemetery Operator can confirm the ownership of the rights and provide the third party purchaser with the required certificate.

1. an Interment Rights Certificate endorsed by the current rights holder.
2. if the resale involves interment rights, a written statement of the number of lots that have been used in the plot and the number of lots that remain available.
3. any other documentation in the interment or scattering rights holder(s) possession relating to the rights.

B. The third party purchaser will be provided with the following documents by the Cemetery Operator:

- 1 a copy of the cancelled interment rights certificate endorsed by the previous rights holder
- 2 a copy of the cemetery's current by-law
- 3 a copy of the cemetery's current price list
- 4 if the resale involves interment rights, a written statement of the number of lots that have been used in the plot and the number of lots that remain available.
- 5 any other documentation in the interment rights holder(s) possession relating to the rights

C The Cemetery Operator will require:

1. a statement signed by the Rights Holder(s) selling the interment rights acknowledging the sale of the interment rights to the third party purchaser
2. confirmation that the person selling the Interment Rights is the person registered on the cemetery records and that they have the right to re-sell the interment or scattering rights to the third party;
3. the date the interment rights were sold to the third party
4. the name and address of the third party purchaser(s)
5. a statement of any money owing to the Cemetery Operator in respect to the Interment.

Once the endorsed certificate and all required information has been received by the Cemetery Operator from the Rights Holder(s), the Cemetery Operator will issue a new interment or scattering rights certificate to the third party purchaser.

Upon completion of the above listed procedures, and upon the issuance of the new interment rights certificate, the third party purchaser or transferee(s) shall be considered the current interment Rights Holder(s) of the interment rights, and the resale of the interment rights shall be considered final in accordance with the cemetery By-law and the FBCSA.

The Cemetery Operator will charge an administration fee for the issuance of the new certificate in accordance with the price listed on the cemetery operator's current price list.

The Cemetery Operator does not prohibit the resale of an interment rights and may repurchase the interment rights from the rights holder(s) if the Cemetery Operator so desires and may negotiate a purchase price so long as the seller acknowledges being aware of the Cemetery Operator's current price list amounts for interment rights.

12. No rights shall be exercised transferred or services provided, until all fees have been paid in full and all arrears or other amounts due connected with the lot have been paid in full.
13. If any interment rights have not been used after a 30- year period, they may be considered abandoned. The Cemetery Operator may apply to the Ministry Registrar for a declaration that the interment rights are abandoned after making inquiries and giving reasonable notices to find the Interment Rights Holder or beneficiaries. Upon being satisfied that the rights are abandoned, the Registrar will issue a declaration to that effect. If there is not an appeal by the end of the time period allowed for appeal, the Cemetery Operator may resell the interment rights in question.
14. Any person whose interment rights have been resold after being declared abandoned may contact the Cemetery Operator and will be provided the equivalent interment rights in the Cemetery if available.

C. INTERMENTS AND DISINTERMENTS

1. Winter burials will only take place if weather conditions permit as determined by the Cemetery Operator.
2. Each single lot, 4ft x10ft, will accommodate one casket burial. The cremated remains of not more than eight persons may also be buried in a single lot.
3. Each 2 ft. x 2 ft. cremation lot or 12” x 12” columbarium niche can accommodate two remains.
4. Remains to be buried in a lot must be enclosed in a container, sealed securely, and of sufficient strength to permit burial with the container remaining intact. The container must be of a size to permit burial within the size of the lot.
5. All interments must be authorized by the Interment Rights Holder except for the interment of the Interment Rights Holder.
6. A Member or a designate of the Cemetery Operator will be in attendance at each interment.
7. The Rights Holder (or Funeral Director in attendance) must provide the Cemetery Operator or its representative with a burial permit issued by the Division Registrar showing that the death has been registered or in the case of cremation a Certificate of Cremation before an interment can take place.
8. Persons requesting interment in a lot will be responsible for all charges incurred.
9. No lot shall be opened for interment or disinterment by any person without previous permission of the Cemetery Operator.
10. Written permission from the interment rights holder is required for a disinterment. No person shall remove human remains from the Cemetery without notification to a Medical Officer of Health confirming that the FBCSA and the Regulations have been complied with, is affixed to the container. A burial certificate under the Vital Statistics Act is not required to re-inter human remains that have been disinterred according to the FBCSA

11. The Interment Rights belong only to the persons named on the Certificate and there is no transmission of interest through death.
12. Pets or other lower animals are not allowed to be buried on cemetery grounds.
13. The Cemetery Operator will exercise all due care in making interments and disinterments but is not responsible for damage to any casket, urn or other container during either interment or disinterment.
15. The Cemetery Operator reserves the right, at its cost, to correct any error made by it in making interments, in the description of the lot, or transfer or conveyance of any interment rights. The Cemetery Operator may either cancel such grant and substitute other interment rights, or a lot of equal value and similar location, as far as reasonably possible, or refund all money paid on account for such purchase. Notice will be given personally to the Interment Rights Holders or if necessary, it may be mailed to the Interment Rights Holder or their legal representatives at their last appearing address in the record books of the Cemetery. In the event any such error may involve the disinterment of remains, the Cemetery Operator shall first obtain the approval of any regulatory authority and the Interment Rights Holder.
16. The Cemetery Operator cannot be held responsible for any errors made in any verbal funeral arrangements. Arrangements must be in writing.
17. Notice of each interment must be given to the Cemetery at least 24 hours in advance, 8 hours of which must be regular working hours.

D. CARE OF LOTS – GENERAL

1. All lots and plots sold shall be maintained and kept properly graded, seeded and mown by the Cemetery to ensure the safety of the public and preserve the dignity of the Cemetery.
2. No chair or bench, wooden or wire trellis, arch or iron rods or any other material shall be brought to or left in the Cemetery without the approval of the Cemetery Operator.

3. ***NO GLASS CONTAINERS*** of any kind are allowed in the Cemetery at any time.
4. No trees, shrubs, or perennial flowers may be cultivated on the lots.
5. No person shall do any work upon a burial lot without permission of the Cemetery Operator.
6. Implements or materials used in doing any work within the cemetery shall be removed and if this is not done, the Cemetery Operator shall remove the same.
7. Borders, fences, railings, walls, cut-stone coping and hedges in or around lots are prohibited
8. No Interment Rights Holder shall change the grading of the lot, and in case any such change, the Cemetery Operator may restore the lot to its original grade at the expense of the Interment Rights Holder.
9. No unauthorized person may lay sod, or move corner markers, footstones or markers.
10. The Cemetery Operator is not responsible for loss of or damage to any articles left upon cemetery grounds

E. CARE OF LOTS – FLOWERS

1. Artificial flowers are permitted, provided they do not hinder the general maintenance of the Cemetery.
2. The Cemetery reserves the right to remove all flowers, artificial flowers, potted plants, wreaths and baskets of flowers when they become withered or unsightly, or if for any other reason such removals are in the best interest of the Cemetery.
3. Vases, urns and flower stands not properly cared for and that are not filled with plants by the first day of June in any year may be removed from the lot

and any stand, holder, vase or other receptacle for flowers that is unsightly or unsuitable may be prohibited or removed by the Cemetery Operator.

4. Flowerbeds must not extend out more than 8 inches from the monument/marker or beyond the width of the base monument/marker. If there is no monument then permission of the Cemetery Operator must be obtained for a flowerbed. Planting of a border around the lot is prohibited. If the flowerbed is not properly maintained or becomes unsightly then the Cemetery Operator may sod or plant grass over the area.
5. Families or visitors placing potted plants, flowerbeds, flowers, urns, artificial wreaths and saddles are responsible for their upkeep and removal by October 15 in preparation for winter.
6. Cement urns are allowed to remain by the lot after October 15 but must be placed upside down as close to the monument base as possible.
7. Artificial wreaths are allowed to be placed on the lot after the first day of November provided they are securely fastened to the monument, or where there is no monument, mounted on a stand at least 30 inches high and securely anchored to the ground. These wreaths must be removed before April 1st otherwise Cemetery staff will remove them.

F. MONUMENTS AND MARKERS

1. No monument, marker or other structure may be erected or permitted on a lot until all the charges have been paid in full.
2. No more than one upright monument or pillow marker may be erected or placed on a 4' x 10' lot/plot.
3. Upright markers shall be permitted on a Lot/Plot, excluding a Cremation Lot/Plot, provided that
 - (a) The die stone (marker) is at least 8 inches (20 cm) thick;
 - (b) The die stone (marker) must be installed on a granite base, the height of which shall be a minimum of 6 inches (15 cm)

(c) The top surface of the base must be both wider and longer than the die stone in order to provide a minimum 2 inches (5cm) border of the surface of the base exposed on all sides

(d) The bottom of the base shall be smooth sawn

(e) The base shall be installed on a foundation constructed by the Cemetery approved external contractor and paid for by the Interment Rights Holder

(f) The maximum size of the upright marker shall be;

- Single Lot: Height 34 inches (85 cm) including the base, width 30 inches (76 cm)
- Plots of two Lots: Height 36 inches (90 cm) including the base, width 48 inches (120 cm) or
- Plots of three or more Lots: height 38 inches (95 cm) including the base, width 54 inches (137 cm)

4. All monuments taller than one foot (30 cm) shall be set upon adequate concrete base. The foundation on which the base sits must be no less than 48 inches (122 cm) deep and large enough to provide a 2 inch (5) cm border on all sides of the base. The foundation shall be installed by the Cemetery approved external contractor and paid for by the Interment Rights Holder.

5. Flat Pillow markers shall be permitted on a Lot provided:

(a) The pillow markers must be placed on a concrete pad not less than four inches in thickness

(b) The upper surface of the concrete pad shall extend three inches on all sides of the marker and be flush with the ground.

(c) The maximum size of a pillow marker shall be: single lot 18 inches x 24 inches (46 cm x 61 cm) and double Lot 18 inches x 36 inches (46 cm x 90 cm)

(d) The pillow marker shall be constructed so that the marker slopes from back to the front.

6. The maximum size of a marker on a 2' x 2' cremation lot is 16in by 18in. (41 cm x 45 cm). The maximum size of a marker on a 4' x 10' lot is 20" x 24" (50 cm x 60 cm)
7. No inscription shall be placed on any marker which is not in keeping with the dignity and decorum of the cemetery.
8. One footstone with a flat level surface set flush with the ground may be placed at each grave (in addition to the monument). This footstone shall be placed at the end of the grave farthest from the monument. All footstones are to be installed with a Cemetery Operator member or designate present.
9. All markers and monuments are to be installed in a location only as directed by the Cemetery Operator. Permission from the Cemetery Operator is required before any memorial, monument or marker can be placed, altered or removed. This is to ensure that it is installed in the proper lot and to maintain continuity for appearance.
10. Every person installing a monument or marker in the Cemetery must pay the prescribed amount, as regulated in the FBCSA, to the Care and Maintenance Fund. The small amount of interest from this fund does not cover any major repairs to the monuments. Repairs to monuments are the responsibility of the Rights Holder.
11. The Cemetery will take reasonable precautions to protect the property of the Interment Rights holder, but it assumes no liability for the loss of, or damage to, any monument or part thereof except where such damage or loss is due to its negligence.
12. All markers must be able to withstand a minimum of 100 lbs (45 kg) of horizontal force applied anywhere on the monument without toppling. If a monument or marker in the cemetery presents a risk to public safety because it is unstable, the Cemetery Operator shall do whatever is necessary to remove the risk including laying down or removing the monument, marker or footstone from the lot.
13. All monument dealers, contractors and workers must receive Cemetery Board approval before any work is commenced. They must agree to repair any damage to the grounds of the Cemetery caused by the installation of monuments at their expense. If the Cemetery Operator must repair the damage caused by the dealers, contractor or workers the Rights

Holder will be responsible for the expenses incurred. The workers agree to respect the dignity of the Cemetery. If there is a funeral in the vicinity they must cease work until the conclusion of the service.

G. RULES FOR VISITORS

1. Visitors are always welcome at the Cemetery during daylight hours. They are asked to remember the respect due to the dead.
2. Children under the age of twelve years are welcome in the cemetery grounds when accompanied by an adult, who shall be responsible for their good conduct and shall see that they do not run over lots and climb upon the monuments.
3. No unlicensed vehicles, ATV, or snowmobiles are allowed in the Cemetery.
4. All dogs or other pets must be on a leash while on the Cemetery grounds and all droppings must be picked up and disposed of by the owner.
5. No picnic or other party will be permitted on the Cemetery grounds.
6. Any person who while in the Cemetery, damages or moves any tree, plant, monument, marker, footstone, fence, structure or other thing usually erected, planted or placed in the Cemetery is liable to the Cemetery Operator and to any Interment Rights Holder who, as a result, incurs damage. The amount of damages will be the amount required to restore the items or property to their original state.
7. Any complaints by Interment Rights Holders or visitors must be made in writing directly to the Cemetery Operator.
8. The Rights Holder must remove from the grounds any rubbish they create.
9. Visitors to the cemetery shall behave in a manner in keeping with the dignity of the cemetery. Person behaving in a manner which is not in keeping with the dignity of the cemetery shall be required to leave the cemetery.

- 10 Implements or materials used in doing any work must not be left unattended in the Cemetery.
11. The Cemetery may remove any article, which is detrimental to efficient maintenance or constitutes a hazard to machinery, employees or visitors, or is unsightly or does not conform to the natural beauty of design of the Cemetery. Any article so removed will be held at the Cemetery for collection and the owner if known, will be notified. If not collected, it will be disposed of 30 days after removal or notification.

H. GIFTS TO THE CEMETERY

1. The Cemetery gratefully accepts donations. All trees and structural gifts, such as benches, birdbaths and sundials as donations or elements in a donated area, must be approved by the Cemetery Operator and become the property of the Cemetery. Once installed, donated structures cannot be removed, painted or adjusted in any way or form by individuals. They are located at the approval of the Board, although every effort will be made to accommodate the requests(s) of the donor. The donation is recognized for the lifetime of the plant or item. The cemetery accepts no responsibility for damage, loss or replacement of any donated items.

I. DEFINITIONS

1. “**Cemetery**” means Bethesda Lutheran Cemetery located at 9423 Kennedy Road, Markham, Region of York. (Con 6 PT Lot17)
2. “**Ministry**” means the Ministry of Consumer Services for Ontario.
3. “**Cemetery Operator**” means the duly appointed Bethesda Lutheran Cemetery Board.
4. “**Lot**” means an area of land in the Cemetery containing, or set aside to contain human remains. (Usually 4 feet by 10 feet) and includes a compartment in a columbarium or niche wall
5. “**Plot**” means two or more adjacent lots in which the interment rights have been sold as a unit.
6. “**Cremation Lot**” means burial space intended to receive cremated remains. 2’x2’ in ground or a compartment in a columbarium or niche wall
7. “**Grave**” means any burial space intended for an adult, and having a size of 4 feet by 10 feet.
8. “**Interment Rights**” includes the right to require or direct the interment of human remains in a lot.

- 9.” **Interment Rights Holder**`` any person designated to hold the right to inter human remains in a specified lot.
10. “**Certificate of Interment Rights**” means the certificate issued by Bethesda Lutheran Cemetery Board to the purchaser of the interment rights in a lot/plot.
11. “**Care and Maintenance Fund**” means the trust fund in which all fees as defined by the Ministry and which are collected by the Cemetery for the care and maintenance of lots and monuments are accumulated and invested.
12. “**General Maintenance Account**” means the account that has been set aside for the maintenance of the Cemetery and for services rendered in connection with its operation.
13. “**Trust Funds**” means those funds in which the Board may invest, which are defined in the “Trustee Act”, R.S.O. 1989.
14. “**Monument**” means any permanent memorial projecting above the ground.
15. “**Marker**” means any permanent memorial of granite, marble, or bronze set flush with the surface of the ground.
16. “**Corner Markers**” means the four granite markers (6 in x 6 in) set flush with surface of the ground and used to indicate the location of a lot.
17. “**Plan,**” means the plan of the Cemetery, approved by the Bereavement Authority of Ontario.
18. “**Bereavement Authority of Ontario**” means the Authority created by the Province of Ontario to manage the Funeral, Burial and Cremation Services Act 2002 (FBCSA)

<p>APPROVED</p> <p>By the Registrar, <i>Funeral, Burial and Cremation Services Act, 2002, Bereavement Authority of Ontario</i></p>	<p>APPROUVÉ</p> <p>Par le Registraeur, <i>Loi de 2002 sur les services funéraires et les services d'enterrement et de crémation, l'Autorité des services funéraires et cimetières de l'Ontario</i></p>
<p>Date: <u>July 9, 2024</u></p>	